IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE V.V.S.RAO**

**WRIT PETITION No. 12949 of 2004**

Between:

M/s Brigages Bar & Restaurant 6-1-84/14,

Khusrujung House Complex, First Floor,

A.G.Office Road, Saifabad, Hyderabad,

rep.by its Prop.D.Jayarami Reddy.

**..... PETITIONER**

AND

1 Commissioner of Prohibition & Excise, A.P., Hyderabad.
2 Superintendent, Prohibition and Excise, Hyderabad.

**....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus, or any other appropriate writ, order or direction declaring the proceedings dt. 19/05/2004 vide Cr.No.9411/2004/CPE/G1 of the first Respondent as illegal, arbitrary and without jurisdiction and in violation of Sec. 47 of the AP. Excise Act.

**Counsel for the Petitioner : MR.C.NAGESWARA RAO**

**Counsel for Respondents : GP FOR PROHIBITION & EXCISE**

**The Court made the following :**

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**ORDER :**

Aggrieved by the proceedings of the first respondent
dated 19-5-2004 the petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking declaration that the said proceedings of the first respondent is illegal, contrary to the provisions of the Andhra Pradesh Excise Act, 1968 (for brevity 'the Act') and without jurisdiction.

The petitioner is the holder of IL-17 Licence issued by the first respondent under the Andhra Pradesh Indian Liquor & Foreign Liquior Rules, 1976. On 28-2-2004 the Bar & Restaurant run by the petitioner was visited by the Excise officials at
11-15 PM. At the time of inspection, the Bar & Restaurant was serving drinks, though as per the conditions of licence it was expected to close its business by 11-00 PM. Therefore, the Excise officials registered a case being Crime No.159 of 2003-04 under Section 31(1)(b) of the Act. Thereafter, the impugned order came to be passed compounding the violation. By impugned order, the first respondent imposed a compounding fee of Rs.1,00,000/-, aggrieved by which the present writ petition is filed. The only ground raised in challenge to the impugned order is that under Section 47 of the Act, the first respondent is entitled to impose compounding fee of Rs.10,000/- only, and therefore, levy of compounding fee of Rs.1,00,000/- is without jurisdiction. The same submission is put-forward at the time of argument.

The learned Government Pleader for Excise sought to justify the impugned order placing reliance on Section 47(1) of the Act, which reads as under.

> **47. Compounding of offences:--** (1) The Collector, or any Prohibition and Excise Officer specially empowered in that behalf may accept from any person whose licence or permit is liable
> to be cancelled or suspended under clause (a) or clause (b) of
> sub-section (1) of Section 31 or who is reasonably suspected of having committed an offence falling under Clause (b), clause (c) or clause (d), (g) or clause (h) of Section 34, clause (a), clause (e), clause (f), clause (g) or clause (h) of Section 36, clause (b),

clause (c) or clause (d) of Section 37 or Section 41 a sum of money not exceeding (one lakh rupees) and subject to such minima, as may be prescribed, in lieu of such cancellation or suspension or by way of compensation for the offence which may have been committed as the case may be; and in all cases in which any property has been seized is liable to confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer:

Provided that where the property so seized is a liquor manufactured in contravention of this Act, such liquor shall not be released but shall be disposed of in such manner as may be prescribed.

Section 47(1) was amended by Andhra Pradesh Excise (Amendment) Act, 2005 (hereafter called 'the Amendment Act') substituting the words "rupees one lakh" for the words "rupees ten thousand" which were there in the un-amended Section 47(1) of the Act. The contravention alleged was on 28-2-2004 when the amendment was not in force. Further, even as per the Amendment Act, the Act shall come into force on such date as the
State Government may fix. A notification vide G.O.Rt.No.434, dated 6-4-2005 is placed before this Court, which would show the Government fixed 2-4-2005 as the date on which the amended Section 47(1) of the Act shall come into force. Exfacie, it would show that when the petitioner's business premises was inspected on 28-2-2004 and when the impugned order was passed imposing compounding fee of Rs.1,00,000/-, the first respondent had jurisdiction to impose a compounding fee of Rs.10,000/- (Rupees ten thousand only). That is to say, the exercise of power to levy the compounding fee must be strictly in accordance with Section 47(1) of the Act, which means that there cannot be a compounding fee exceeding Rs.10,000/-.

In **Government of A.P. v. H.K.V.P.B.Chemicals (P) Ltd.** a Division Bench of this Court considered the question as to whether the Commissioner can impose compounding fee in excess of the amount prescribed under Section 47 of the Act. Repelling the contention of the Government that the Excise authorities can levy compounding fee *de horse* the provisions of Section 47 of the Act, the Division Bench observed as under.

"It is now well settled that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order made in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out - *vide* ***Mohinder Singh v. Chief Election Commissioner [AIR 1978 SC 851 (AIR 1952 SC 16, Rel.on)]****....*

We must also observe that except Section 47 of the Excise Act, there is no other provision in the Excise Act or in any other Act empowering the Government to compound an offence committed under the Excise Act and if the Government chooses to exercise such power, it must exercise the power in the manner envisaged under Section 47 of the Act."

Following the above Division Bench Judgment, this Court holds that the impugned order is without jurisdiction and unsustainable.

Accordingly the writ petition is allowed with costs.

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(V.V.S. RAO, J.)

08-06-2005.

Msr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Wednesday, the Eighth Day of June, Two thousand and five.

To

1 Commissioner of Prohibition & Excise, A.P., Hyderabad.
2 Superintendent, Prohibition and Excise, Hyderabad.

3 2 CCs to Government Pleader for Prohibition & Excise,

High Court Buildings, Hyderabad.

4 2 CD copies

**HON'BLE SRI JUSTICE V.V.S. RAO**

**WRIT PETITION No.12949 of 2004**

**08-06-2005**

**(Msr)**